

EXHIBIT 2: Trustee's Responses to the HSBC Non-Parties' Objections Relating to Trustee's Proposed Topics for Examination of Craig Perry

<u>Topic No.</u>	<u>Topic Description</u>	<u>HSBC Objections</u>	<u>Trustee Responses</u>
1	The custodian agreement between HSBC and the Kingate Funds.	The Trustee already has a copy of this agreement, which is the best evidence of its content. Moreover, HSBC Bank Bermuda and Mr. Perry object to this topic on the ground that the Trustee is able to seek further information from the Kingate Defendants about how the agreement operated and he has failed to explain why it is necessary to subpoena Mr. Perry, a non-party, to obtain this information.	<p>The HSBC Non-Parties do not dispute the relevance of this topic.</p> <p>The HSBC Non-Parties do not dispute that Mr. Perry has knowledge of this topic. Mr. Perry possessed a copy of this document while working for HSBC on the Kingate Funds.</p> <p>This topic is not limited to the content of the agreement and includes, among other things, its performance.</p> <p>Mr. Perry can testify to the HSBC Non-Parties' communications and knowledge as custodian for the Kingate Funds, including with respect to the flow of monies into and out of the Kingate Funds' bank accounts, the Kingate Funds' state of mind, and the Kingate Funds' business relationships.</p> <p>Mr. Perry has unique information, and the Trustee is not precluded from discovery simply because any similar discovery may be available from other sources. The Trustee also has a right to corroborate information received from a party-opponent.</p>

EXHIBIT 2: Trustee's Responses to the HSBC Non-Parties' Objections Relating to Trustee's Proposed Topics for Examination of Craig Perry

<u>Topic No.</u>	<u>Topic Description</u>	<u>HSBC Objections</u>	<u>Trustee Responses</u>
2	Custody of the Kingate Funds' assets by BLMIS.	HSBC Bank Bermuda and Mr. Perry object to this topic on the ground that it seeks information from Mr. Perry that he would have no reason to know and which the Trustee is able to seek from the Kingate Funds.	<p>The HSBC Non-Parties do not dispute the relevance of this topic. It will bear on, among other things, the flow of monies into and out of the Kingate Funds, the Kingate Funds' business relationships, and the Kingate Funds' state of mind, including with respect to the custody and segregation of assets by BLMIS and HSBC.</p> <p>The HSBC Non-Parties' argument that Mr. Perry "would have no reason to" have knowledge of this topic does not deny that Mr. Perry has knowledge of this topic.</p> <p>As an employee of HSBC and its predecessor from at least 2001 to the present and Senior Account Manager working on the Kingate Funds, Mr. Perry has knowledge of, among other things, redemptions from and subscriptions in the Kingate Funds, and how the flows of monies were directed between BLMIS and HSBC.</p> <p>Mr. Perry has important and unique information, and the Trustee is not precluded from discovery simply because any similar discovery may be available from other sources. The Trustee also has a right to corroborate information received from a party-opponent.</p>

EXHIBIT 2: Trustee's Responses to the HSBC Non-Parties' Objections Relating to Trustee's Proposed Topics for Examination of Craig Perry

<u>Topic No.</u>	<u>Topic Description</u>	<u>HSBC Objections</u>	<u>Trustee Responses</u>
3	HSBC's procedures for performing its role as the Kingate Funds' custodian.	HSBC Bank Bermuda and Mr. Perry object to this topic on the grounds that it is not relevant and, in any event, is information that the Trustee is able to seek from the Kingate Funds as the recipients of the custodial services.	<p>The HSBC Non-Parties' general objection that this topic "is not relevant" lacks any specific basis, is conclusory, and should be rejected.</p> <p>This topic will bear on the Kingate Funds' business relationships including the work HSBC performed on behalf of the Kingate Funds, the Kingate Funds' state of mind, the flow of monies into and out of the Kingate Funds, and whether HSBC followed standard procedures in its work on behalf of the Kingate Funds.</p> <p>The HSBC Non-Parties do not dispute that Mr. Perry has knowledge of this topic. As Senior Account Manager for the Kingate Funds at HSBC, Mr. Perry was a key person responsible for performing HSBC's duties as custodian to the Kingate Funds.</p> <p>Mr. Perry has important and unique information regarding HSBC's procedures that the Kingate Funds would not have, and the Trustee is not precluded from discovery simply because any similar discovery may be available from other sources. The Trustee also has a right to corroborate information received from a party-opponent.</p>
4	Change in procedures following HSBC's acquisition of The Bank of Bermuda Limited in 2004.	HSBC Bank Bermuda and Mr. Perry object to this topic on the ground that it has no relevance to the claims alleged in this proceeding which remain only against the Kingate Funds.	<p>The HSBC Non-Parties' general objection that this topic "has no relevance" lacks any specific basis, is conclusory, and should be rejected. To the extent the HSBC Non-Parties are objecting that this topic is not relevant now that HSBC has been dismissed, the objection also lacks merit.</p> <p>This topic will bear on the Kingate Funds' business relationships including the work HSBC performed on behalf of the Kingate Funds, the Kingate Funds' state of mind, the flow of monies into and out of the Kingate Funds, and whether HSBC followed standard procedures in its work on behalf of the Kingate Funds.</p> <p>The HSBC Non-Parties do not dispute that Mr. Perry has knowledge of this topic. As an employee of HSBC and its predecessor from at least 2001 to the present and Senior Account Manager working on the Kingate Funds, Mr. Perry was a key person responsible for performing HSBC's duties as custodian to the Kingate Funds.</p>

EXHIBIT 2: Trustee's Responses to the HSBC Non-Parties' Objections Relating to Trustee's Proposed Topics for Examination of Craig Perry

<u>Topic No.</u>	<u>Topic Description</u>	<u>HSBC Objections</u>	<u>Trustee Responses</u>
5	Accounts held by the Kingate Funds at HSBC and the administration of those accounts, including the deficits and/or shortfalls in the accounts, the "sweep account," and/or use of web-based account access.	HSBC Bank Bermuda and Mr. Perry object to this topic on the grounds that it is not relevant and, in any event, is information that the Trustee is able to seek from the Kingate Funds.	<p>The HSBC Non-Parties' general objection that this topic "is not relevant" lacks any specific basis, is conclusory, and should be rejected.</p> <p>This topic will bear on the Kingate Funds' business relationships including the work HSBC performed on behalf of and the information provided to the Kingate Funds, the Kingate Funds' state of mind, the flow of monies into and out of the Kingate Funds, and whether HSBC followed standard procedures in its work on behalf of the Kingate Funds.</p> <p>The HSBC Non-Parties do not dispute that Mr. Perry has knowledge of this topic. As Senior Account Manager for the Kingate Funds at HSBC, Mr. Perry was a key person responsible for performing HSBC's duties as custodian to the Kingate Funds.</p> <p>Mr. Perry has important and unique information regarding HSBC's procedures that the Kingate Funds would not have, and the Trustee is not precluded from discovery simply because any similar discovery may be available from other sources. The Trustee also has a right to corroborate information received from a party-opponent.</p>
6	HSBC's fees for acting as the Kingate Funds' custodian.	HSBC Bank Bermuda and Mr. Perry object to this topic on the ground that it seeks information that the Trustee is able to seek from the Kingate Funds' because those Funds were party to any contract with HSBC Bank Bermuda that would provide for fees in exchange for custodial services, and therefore it is not necessary to subpoena Mr. Perry, a non-party, to obtain this information.	<p>The HSBC Non-Parties do not dispute the relevance of this topic.</p> <p>The HSBC Non-Parties do not dispute that Mr. Perry has knowledge of this topic.</p> <p>Mr. Perry has important and unique information regarding HSBC's procedures that the Kingate Funds would not have, and the Trustee is not precluded from discovery simply because any similar discovery may be available from other sources. The Trustee also has a right to corroborate information received from a party-opponent.</p>

EXHIBIT 2: Trustee's Responses to the HSBC Non-Parties' Objections Relating to Trustee's Proposed Topics for Examination of Craig Perry

<u>Topic No.</u>	<u>Topic Description</u>	<u>HSBC Objections</u>	<u>Trustee Responses</u>
7	The daily and/or weekly "Client View" reports sent by HSBC to KML.	HSBC Bank Bermuda and Mr. Perry object to this topic on the ground that it seeks information regarding correspondence between HSBC and a third party, which is irrelevant to the claims alleged in the Remaining Kingate Action.	<p>KML was the co-manager of the Kingate Funds and their agent, as this Court has found in its ruling denying the Kingate Funds' motion to dismiss.¹ These communications between HSBC and KML will bear on the Kingate Funds' state of mind and business relationships, as well as the flow of monies into and out of the Kingate Funds.</p> <p>The HSBC Non-Parties do not dispute that Mr. Perry has knowledge of this topic.</p>
8	Forward contract and/or currency hedging transactions performed by HSBC on behalf of the Kingate Funds.	HSBC Bank Bermuda and Mr. Perry object to this topic on the grounds that it is irrelevant and, in any event, seeks information that the Trustee is able to obtain from the Kingate Funds.	<p>This topic will bear on the Kingate Funds' Sixteenth Affirmative Defense that "The Trustee's claims are barred, in whole or in part, to the extent the transfers were made by or to, or for the benefit of, a swap participant or financial participant under or in connection with any swap agreement, and before the commencement of the case, within the meaning of 11 U.S.C. § 546(g)."²</p> <p>The HSBC Non-Parties do not dispute that Mr. Perry has knowledge of this topic.</p> <p>Mr. Perry has important and unique information regarding HSBC's procedures that the Kingate Funds would not have, and the Trustee is not precluded from discovery simply because any similar discovery may be available from other sources. The Trustee also has a right to corroborate information received from a party-opponent.</p>

¹ ECF No. 199 at 5, 29-35.

² See Amended Answer and Jury Demand of Defendants Kingate Global Fund Limited and Kingate Euro Fund Limited, ECF No. 302-1 at 63.

EXHIBIT 2: Trustee's Responses to the HSBC Non-Parties' Objections Relating to Trustee's Proposed Topics for Examination of Craig Perry

<u>Topic No.</u>	<u>Topic Description</u>	<u>HSBC Objections</u>	<u>Trustee Responses</u>
9	Communications between Ms. Salahuddin and other KML employees and HSBC concerning the Kingate Funds' accounts with HSBC.	HSBC Bank Bermuda and Mr. Perry object to this topic on the ground that it seeks information related to correspondence between HSBC and third parties, which is irrelevant to the claims alleged in the Remaining Kingate Action.	<p>KML was the co-manager of the Kingate Funds and their agent, as this Court has found in its ruling denying the Kingate Funds' motion to dismiss.³ These communications between HSBC and KML will bear on the Kingate Funds' state of mind and business relationships, as well as the flow of monies into and out of the Kingate Funds.</p> <p>The HSBC Non-Parties do not dispute that Mr. Perry has knowledge of this topic.</p>
10	Internal communications concerning the Kingate Funds' accounts with HSBC.	HSBC Bank Bermuda and Mr. Perry object to this topic on the ground that it seeks information concerning HSBC's internal communications, which are irrelevant to the claims alleged in the Remaining Kingate Action.	<p>Mr. Perry can testify to HSBC's communications and knowledge as custodian for the Kingate Funds, including with respect to the flow of monies into and out of the Kingate Funds' bank accounts, the Kingate Funds' state of mind, and the Kingate Funds' business relationships. Internal communications also may reference external communications with the Kingate Funds and their agents. All of these issues are relevant to the claims and defenses in this proceeding.</p> <p>The HSBC Non-Parties do not dispute that Mr. Perry has knowledge of this topic.</p>
11	Communications with Messrs. Grosso and Ceretti, and FIM regarding the Kingate Funds' accounts with HSBC.	HSBC Bank Bermuda and Mr. Perry object to this topic to the extent that it purports to seek information beyond Mr. Perry's own communications and to have him testify on a hearsay basis concerning purported communications with an HSBC employee of a different HSBC entity located in Monaco (referenced herein at ¶ 6(e)).	<p>The HSBC Non-Parties do not dispute the relevance of this topic.</p> <p>This topic will bear on, among other things, admissions by the Kingate Funds and their agents, and the Kingate Funds' state of mind and business relationships.</p> <p>The HSBC Non-Parties do not deny that Mr. Perry has knowledge of this topic. The Trustee is entitled to investigate the limits of Mr. Perry's knowledge.</p>

³ ECF No. 199 at 5, 29-35.

EXHIBIT 2: Trustee's Responses to the HSBC Non-Parties' Objections Relating to Trustee's Proposed Topics for Examination of Craig Perry

<u>Topic No.</u>	<u>Topic Description</u>	<u>HSBC Objections</u>	<u>Trustee Responses</u>
12	HSBC's hold placed on the Kingate Funds' accounts.	HSBC Bank Bermuda and Mr. Perry object to this topic on the ground that it seeks information which is irrelevant to the claims in this proceeding, including because the information sought relates to events occurring subsequent to Madoff's arrest.	<p>The HSBC Non-Parties' relevance objection is without merit because HSBC's hold placed on the Kingate Funds' accounts occurred prior to Madoff's arrest. This topic will bear on, among other things, the flow of monies into and out of the Kingate Funds and the Kingate Funds' state of mind.</p> <p>The HSBC Non-Parties do not dispute that Mr. Perry has knowledge of this topic.</p>
13	Communications from and/or with the Kingate Funds' investors after December 11, 2008.	HSBC Bank Bermuda and Mr. Perry object to this topic on the ground that it seeks information which is irrelevant to the claims in this proceeding, including because the information sought relates to events occurring subsequent to Madoff's arrest. Moreover, it is irrelevant because it seeks information relating to correspondence between HSBC and third parties.	<p>Communications with the Kingate Funds' investors after Madoff's arrest will bear on the Kingate Funds' business relationships and state of mind prior to the arrest.</p> <p>The HSBC Non-Parties do not dispute that Mr. Perry has knowledge of this topic.</p>

EXHIBIT 2: Trustee's Responses to the HSBC Non-Parties' Objections Relating to Trustee's Proposed Topics for Examination of Craig Perry

<u>Topic No.</u>	<u>Topic Description</u>	<u>HSBC Objections</u>	<u>Trustee Responses</u>
14	HSBC's freezing of the Kingate Funds' HSBC bank accounts after December 11, 2008.	HSBC Bank Bermuda and Mr. Perry object to this topic on the ground that it seeks information which is irrelevant to the claims in this proceeding, including because the information sought relates to events occurring subsequent to Madoff's arrest.	<p>HSBC's actions after Madoff's arrest will bear on the Kingate Funds' business relationships and state of mind, and the flow of monies into and out of the Kingate Funds, prior to the arrest.</p> <p>This objection also may be moot because the Trustee had agreed to the following compromise with the Kingate Funds: "Regarding items 14 and 15, we would agree that our questions to Mr. Perry would seek to establish only the facts that HSBC froze the Kingate accounts and thereafter lifted the freeze upon instructions from Kingate enabling payments to be made from those accounts after December 11, 2008. We would agree only to question Mr. Perry on the details concerning those payments that are tied to activity that took place prior to the fraud (i.e., closing out FX transactions that were initiated before December 11, 2018, payments to former directors, etc.), and will not pursue questioning on payments made and account activity beyond that limited scope. We would agree to this for this witness on this occasion, reserving all rights."</p>
15	Payments made out of the Kingate Funds' HSBC bank accounts after December 11, 2008.	HSBC Bank Bermuda and Mr. Perry object to this topic on the ground that it seeks information which is irrelevant to the claims in this proceeding, including because the information sought relates to events occurring subsequent to Madoff's arrest.	<p>HSBC's actions after Madoff's arrest will bear on the Kingate Funds' business relationships and state of mind, and the flow of monies into and out of the Kingate Funds, prior to the arrest.</p> <p>This objection also may be moot because the Trustee had agreed to the following compromise with the Kingate Funds: "Regarding items 14 and 15, we would agree that our questions to Mr. Perry would seek to establish only the facts that HSBC froze the Kingate accounts and thereafter lifted the freeze upon instructions from Kingate enabling payments to be made from those accounts after December 11, 2008. We would agree only to question Mr. Perry on the details concerning those payments that are tied to activity that took place prior to the fraud (i.e., closing out FX transactions that were initiated before December 11, 2018, payments to former directors, etc.), and will not pursue questioning on payments made and account activity beyond that limited scope. We would agree to this for this witness on this occasion, reserving all rights."</p>

EXHIBIT 2: Trustee's Responses to the HSBC Non-Parties' Objections Relating to Trustee's Proposed Topics for Examination of Craig Perry

<u>Topic No.</u>	<u>Topic Description</u>	<u>HSBC Objections</u>	<u>Trustee Responses</u>
16	HSBC's review of BLMIS.	HSBC Bank Bermuda and Mr. Perry object to this topic on the grounds that it is overly broad and unrelated to the claims alleged in the Remaining Kingate Action.	<p>The HSBC Non-Parties' general objection that this topic is "overly broad" and "unrelated to the claims alleged" lacks any specific basis, is conclusory, and should be rejected.</p> <p>This topic will bear on the Kingate Funds' state of mind and business relationships. HSBC's role as custodian involved transferring monies to and from BLMIS and communications relating to BLMIS and the Kingate Funds.</p> <p>The HSBC Non-Parties do not dispute that Mr. Perry has knowledge of this topic.</p>